

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8677 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 3 to 5 No.
No. 2 Yes.

GAMETI MAMAD HASAN

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner
MR AB VYAS ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 10/03/99

ORAL JUDGEMENT

The petitioner through this writ petition under Article 226 of the Constitution of India has challenged the detention order dated 14.7.1998, Annexure "B" to the writ petition passed by the District Magistrate, Junagadh under section 3(2) of Gujarat Prevention of Antisocial

Activities Act, 1985 (for short PASA) and has prayed for quashing the aforesaid order with further prayer that he be released from illegal detention forthwith.

From the grounds of detention it appears that the Detaining Authority was subjectively satisfied that the petitioner is bootlegger and his activities were prejudicial for maintenance of public order. Subjective satisfaction was arrived at on the basis of registration of 12 offences under various sections of the Bombay Prohibition Act for running illegal distillery of wine and also for keeping countrymade liquor without pass and permit. Other activities of the petitioner connected with bootlegging giving rise to impression that these activities were prejudicial for maintenance of public order were also taken into consideration. The statements of four witnesses who were interrogated under police protection on account of fear of the petitioner were also taken into consideration by the Detaining Authority. The Detaining Authority also considered two chapter cases initiated against the petitioner under section 93 of the Bombay Police Act. Considering the aforesaid material and finding that the activities of the petitioner could not be controlled under ordinary law, the impugned order of detention was passed. It is this order which has been challenged by the learned Counsel for the petitioner in the course of arguments only on two grounds.

One of the grounds of challenge has been the delay in passing the detention order. The learned Counsel contended that the last offence was registered against the petitioner on 13.12.1997 whereas the detention order was passed on 14.7.1998. Hence, there is inordinate delay in passing the detention order. Another contention has been that two witnesses were interrogated on 29.1.1998 and two were interrogated on 31.5.1998 and even from these dates the detention order was inordinately delayed. Hence, it is rendered invalid. In my opinion, there is no substance in this contention. As many as 12 cases were registered against the petitioner under various sections of the Bombay Prohibition Act for distilling countrymade liquor and also for unauthorisedly keeping countrymade liquor. All the twelve cases are pending trial. These cases range between 1995 to 1997. The detention order was not passed only on the basis of those cases or on the basis of last registered offence which came into existence on 13.12.1997. Besides this, the statements of four confidential witnesses were recorded and that too under police protection. One can imagine what was the plight of fear in the minds of these four persons from the petitioner. First two witnesses

stated about the incident of January,1998. The third witness stated about the incident of March,1998 and the fourth witness about the incident of April,1998. They were tremendously terrorised on account of antisocial activities of the petitioner. They could be interrogated under police protection. Two were interrogated on 28.1.1998 and two were interrogated on 31.5.1998. It is only when the entire material was collected that the sponsoring authority could submit his report to the Detaining Authority and the sponsoring authority could not have submitted his report before 31.5.1998. The detention order was passed on 14.7.1998 and as such there was only one month and 13 days delay. This delay cannot be said to be inordinate delay because the Detaining Authority had to apply his mind to the entire material placed by the sponsoring authority before him. Thus, the detention order cannot be struck down on the ground of being delayed.

The other ground of attack has been that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. The incident narrated by the four witnesses do not travel beyond the situation prejudicial for maintenance of public order. It was therefore urged that the detention order is rendered invalid.

After going through translated copy of the grounds of detention I am unable to agree with this contention also. Situation prejudicial to maintenance of public order is not to be understood in the wider sense that situation should be such which created situation like rioting or arson. When PASA Act has defined the public order it has to be understood in that sense. Explanation to sub-section (4) of Section 3 of PASA provides that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among general public or any section thereof or a grave or widespread danger to life, property or public health. From this definition of public order it is manifest that the legislature intended to introduce deeming meaning of disturbance of public order and if the activities of the petitioner are such which directly or indirectly cause or is likely to cause any harm, danger or alarm or feeling of insecurity among general public or any section thereof

it can be said that situation prejudicial for maintenance of public order was created by antisocial activities of the detenu. It is not necessary that all the conditions of this explanation should exist together. If the activities are such which are likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof the activities will be deemed to be prejudicial for maintenance of public order.

In this light the grounds of detention have to be examined with a view to find whether the activities of the petitioner could be called as activities prejudicial for maintenance of public order.

Pages 1 to 4 of the grounds of detention disclose general activities of the petitioner connected with bootlegging activity. There can be no doubt that the petitioner is not only a bootlegger but is chronic bootlegger who is engaged in illegal business of distilling country made liquor right from 1995 and is continuing such illegal activities despite having been arrested dozen times and having been released on bail by the competent courts in all those twelve cases. Other bootlegging activities of the petitioner have been highlighted in the grounds of detention in the opening portion as well as in the statements of four confidential witnesses. Thus, the petitioner was rightly declared to be a bootlegger within the meaning of section 2(b) of PASA.

Coming to the activities of the petitioner being prejudicial for maintenance of public order one can say that engaging in illegal activity of distilling countrymade liquor may not be the activity prejudicial for maintenance of public order but the grounds of detention indicate that illegal distilling is being done by the petitioner in his house in Keshod and all his activities are confined to the distillery run by him. This illegal distilling is not being run secretly but by showing deadly weapons, beating innocent persons who dared to object to illegal distillery being run by the petitioner. The Detaining Authority found that it was difficult for the village people and people residing in surrounding areas to pass through road near distillery run by the petitioner. People of the locality were annoyed but on account of fear of the petitioner they had suffered silently. On account of illegal activities of the petitioner they cannot move freely and they cannot run their business freely. The activities of the

petitioner are increasing day by day which is manifest from registration of twelve cases under the Bombay Prohibition Act from 1995 to 1997. Not only this, he is bullying innocent persons of the village. He is forcing the people to conceal countrymade liquor in their houses and also to consume the liquor by purchasing the same from the petitioner. Filthy remarks were passed by the petitioner and his customers towards ladies and innocent girls, on account of which they felt humiliated and they could not dare to come out of their houses. These activities of the petitioner found corroboration from twelve registered offences against him for distilling and storing countrymade liquor. Consequently, registration of twelve cases cannot be separated, rather, these twelve cases support the subjective satisfaction of the Detaining Authority that sense of alarm, insecurity and fear within the extended meaning of disturbance of public order as contained in explanation to sub-section (4) of section 3 of PASA was created among the general public residing in village Keshod. The details of all the twelve incidents of registered offences have been given in the grounds of detention. In spite of being released on bail the petitioner did not improve, rather, he went ahead with his illegal business of distilling countrymade liquor. Two chapter cases under section 93 of the Prohibition Act Nos. 8/97 & 22/98 were also initiated against the petitioner before Sub-divisional Magistrate, Veraval but the petitioner went strong and did not yield to the ordinary law. Under these circumstances, the Detaining Authority was right in reaching subjective satisfaction that it is not possible to control the aforesaid activities by proceeding under the ordinary law.

The witnesses and the residents of the village were so much terrorised that they had no courage to lodge complaint about illegal activities of the petitioner. With great difficulty by providing police protection to four persons that they could be interrogated on 28.1.1998 and 31.3.1998. The statements of these four witnesses have been considered.

The first witness has stated that the petitioner is dangerous person. He is running distillery in his house and is selling wine. He has also confirmed that in the past on so many occasions the police arrested the petitioner with wine, distilling equipments, furnace etc. He was also found selling wine and bullying persons coming to the house of the petitioner and after consuming liquor they were loitering and creating commotion in the village due to which people of the village are afraid not

only from the petitioner but also from the drunkards who gathered at the house of the petitioner. The petitioner is in the habit of teasing ladies of the village. This witness stated about the incident of January, 1998 The petitioner at 5.00 p.m. went to the farm of the witness and wanted to conceal wine and fermentation equipments etc. in the farm of the witness. Witness opposed whereupon he was beaten and threatened that he would be killed. The witness became silent. Due to fear of the petitioner he could not lodge any complaint with the police. The witness also confirmed that the petitioner is headstrong person and entire people of village are afraid of the petitioner and terror was spread in village due to bullying activities of the petitioner. This statement cannot be considered to be the incident between the petitioner and one witness only. On the other hand, this statement has to be read in the context of explanation to sub-section (4) of section 3 of P.A.S.A. It is not necessary that the incident between the petitioner and the witness should be of such a nature that it should have created situation prejudicial for maintenance of public order. The incident between the petitioner and this witness certainly created sense feeling of alarm, sense of insecurity and danger not only in the mind of the witness but also in the mind of the entire people of the village. Consequently, this incident cannot be termed to be incident within the sphere of disturbance of law and order.

The statement of the second witness is also on the same lines. Initially he has stated about illegal activities of the petitioner. The petitioner is collecting the drunkards at his house and after consuming liquor they create commotion and fearful atmosphere in the village and start teasing the ladies in front of his house. Specific narration of incident on or about 14.1.1998 at 5.00 p.m. was given by the witness. According to this incident two outsiders gave money to school boys to bring something but the witness followed the boys and found that the children purchased wine from the house of the petitioner for the two outsiders and supplied the same to them. Not only this, that the children are engaged by the petitioner in augmenting his business but the teenagers of the village under 15 years of age have been habituated to consume liquor. The witness objected whereupon the petitioner caught hold of the collar of the witness and he was threatened. The witness on account of fear of the petitioner did not lodge any complaint. This incident was also not confined between individual witness and the petitioner. But the

potential effect of this incident was that feeling of alarm, sense of insecurity and danger among the general public was highlighted by this witness. Hence, the statement of this witness about this incident cannot be said to be isolated incident between the petitioner and the witness.

The third witness has likewise narrated about general activities of the petitioner. He specifically stated about the incident of March, 1998. At 11.00 p.m. in the night when the witness was passing through the road the petitioner suddenly came out from the darkness showing knife to the witness and demanded Rs.2000/- from the witness to purchase jaggery, raw material used for distilling countrymade liquor. The witness refused to oblige the petitioner whereupon he was abused and beaten. This also cannot be termed as isolated incident. This incident has direct nexus with the bootlegging activity of the petitioner and has created sense of alarm, feeling of insecurity among the residents of the village.

The fourth witness likewise narrated about general activities of the petitioner and has made specific reference to the incident dated 15.4.1998 at 9.00 a.m. The witness was going on vehicle. The petitioner obstructed him and asked to give him lift in his vehicle. The witness refused to give lift whereupon the petitioner became excited and abused the witness and threatened to kill him. This activity also cannot be examined in isolation but it has to be considered in the background with other material disclosed in the grounds of detention.

In view of the above discussions, it can safely be said that the activities of the petitioner were certainly prejudicial for maintenance of public order as defined in explanation to sub-section (4) of section 3 of PASA. The impugned order of detention is therefore legal and valid. The writ petition has therefore no merit and is bound to fail. The writ petition is accordingly dismissed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt